1980

SIKKIM

GOVERNMENT GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 97 Gangtok, Saturday, November 1, 1980

LAW AND LEGISLATIVE DEPARTMENT
GOVERNMENT OF SIKKIM

Notification No. 12/LL/80

Dated Gangtok, the 29th October, 1980.

The following Act of the Sikkim Legislative Assembly having received the assent of the President on the 16th Day of October, 1980 is hereby published for general information.

SIKKIM ACT NO. 9 OF 1980

SIKKIM PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS AND RENT RECOVERY) ACT, 1980.

AN

ACT

to provide for the speedy eviction of unauthorised occupants from the public premises ;

WHEREAS it is expedient to provide for speedy eviction of unauthorised occupants from public premises;

Be it enacted by the Legislature of Sikkim in the Thirty-first Year of Republic of India as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Sikkim Public Premises (Eviction of Unauthorised Occupants and Rent Recovery) Act, 1980.

(2) It extends to the whole of Sikkim.

(3) It shall be deemed to have come into force on the 22nd day of August, 1980.

Definitions.

2. In this Act, unless the context otherwise requires, —

(a) "Appellate Authority" means an officer appointed by the State Government under sub-section (I) of section 9 of this Act;

(b) "Collector" means the Collector of the district and includes any other officers appointed by the State Government for performing the functions of the Collector under this Act;

(c) "notification" means a notification published in the Official Gazette;

(d) "owner" means —

(i) in relation to any premises belonging to, or taken on lease by, or requisitioned by or on behalf of the State Government that Government; and

(ii) in relation to any premises belonging to, or taken on lease by a local authority, company or corporation, such local authorities, company or corporation, as the case may be;

(e) "person concerned in relation to any public premises, means any person who is in the use or occupation of the public premises

(f) "premises" means any land, whether used for agricultural or non-agricultural or any other purposes, or anybuilding or part of a buildingg and includes,—

(i) the garden, grounds and out-houses, if any, appertaining to such building or part of a building; and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

(g) "public premises" means any premises belonging to, or taken on lease by the State Government, or local authority, or aGovernment company or a corporation owned or controlled by the State Government and includes any land requisitioned by or on behalf of the State Government;

Explanation.— In this clause "Government company" means any company in which not less than fifty one percent of the paid up share capital is held by the State Government.

(h) "prescribed" means prescribed by rules made under this Act;

(i) "rent" in relation to any public premises, means the consideration payable periodically for the authorised occupation of the premises and includes, —

(i) any charge for electricity, water or any other services in connection with the occupation of the premises;

(ii) any tax (by whatever name called) payable in respect of the premises,

where such charge or tax is payable by the State Government or the corporate authority.

Unauthorised occupation of public premises.

3. For the purposes of this Act, a person shall be deemed to be in unauthorised occupation of any public premises —

(a) where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant; or

(b) where he being an allottee, lessee or grantee, has, by reason of the determination or cancellation of his allotment, lease or grant, in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such public premises; or

(c) where any person authorised to occupy any public premises has, whether before or after the commencement of this Act,—

(i) sub-let, in contravention of the terms of allotment, lease or grant without the permission of the State Government or of any other Authority competent to permit such sub-letting, the whole or any part of such public premises; or

(ii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such public premises.

Explanation,— For the purpose of clause (a), a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee.

Issue of notice to show cause against order for eviction.

4. (1) If, in respect of any public premises, the Collector is of the opinion that such premises is in the unauthorised occupation of any person or persons, and that such person or persons should be evicted, the Collector shall issue a notice in such form and containing such particulars as may be prescribed calling upon all persons concerned to show cause before such date, not being less than fifteen days after the date of the notice, as may be specified in the notice, why an order of eviction should not be made and shall cause it to be served in the manner referred to in sub-section (2).

(2) A notice issued under sub-section (I) shall be served personally or by affixing on a conspicuous part of the public premises concerned and in such other manner as may be prescribed.

(3) A notice served in the manner referred to in sub-section (2) shall be deemed to have been duly served.

Eviction of unauthorised persons.

(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the public premises is in unauthorised occupation, the Collector shall make an order of evicrion, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by persons who may be in unauthorised occupation thereof or any part thereof and shall cause a copy of the order to be affixed on a conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of its publication under sub-section (I), the Collector or any other officer duly authorised by the Collector in this behalf may evict that person from and take possession of the public premises and may for that purpose use such force as may be necessary.

Disposal of property left on public premises by unauthorised occupants.

(1) Where any person has been evicted from any public premises under section 5, the Collector may, after giving not less than fourteen days notice to persons from whom possession of the public premises has been taken, remove or cause to be removed or dispose of by public auction any property remaining on such public premises including any material of a demolished building or ungathered crop or fruits or trees.

(2) Where any property is sold under sub-section (I), the sale proceeds thereof, shall, after deducting the expenses of the sale and the amount, if any, due to the State Government or the local authority, company or corporation, as the case may be, on account of arrears of rent or damages or costs, be paid to such person or person as may appear to the Collector to be entitled to the same:

Provided that where the Collector is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the appointment of the same he may refer such dispute to the Civil Court of competent jurisdiction and the decision of the Court thereon shall be final.

Power to required payment of rent or damages in respect of public premises.

7. (1) Where any person is in arrears of rent payable in respect of any public premises, the Collector may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been in unauthorised occupation of any public premises, the Collector may, having regard to such principles of assesment of damages as may be prescribed, assess the damage on account of the use and occupation of such premises and may by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the Collector.

Powers of Collector

8 The Collector shall for the purpose of any inquiry or hearing under section 5, have the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908 (Act V of 1908) when trying a suit, in respect of the following matters namely-

(a) proofs of facts by affidavits;
(b) summoning and enforcing the attendance of any person and examining him on oath;
(c) requiring the discovery and production of
(d) issue of commission; and
(e) any other matter which may be prescribed.

Appeals.

9. (1) An appeal shall lie from every order of the Collector made in respect of any public premises under section 5 or section 7 of this Act to the Appellate Authority to be appointed by the State Government.

(2) An appeal under sub-section (1) shall be preferred,-

(a) in the case of an appeal from an order under section 5, within thirty days from the date of publication of the order under sub-section(1) of that section, and

(b) in case of an appeal from an order under section 7, within thirty days from the date on which the order is communicated to the appellant :

Provided that an appeal filed after the expiry of the said period of thirty days may be entertained if the appellant satisfies that he was prevented by sufficient cause from not filing the appeal in time.

(3) Where an appeal is preferred from an order of the Collector, the appellate authority may stay the enforcement of that order for such period and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the appellate authority as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the appellate authority.

Finality of orders

10. Save as otherwise expressly provided in this Act, every order made by the Collector under section 5 or section 7 or if there is any appeal from any such order, the appellate order under section 9, shall be final and shall not becalled in question in any Court.

Offences and penalties.

11. (1) If any person, who has been evicted from any public premises under this Act, again occupies the premises without authority, for such occupation, he shall punished with imprisonment for a term which may extend to one year or with fine upto five thousand rupees or both.

(2) Any Magistrate convicting a person under sub-section (1) may make an order for evicting that person summarily and such person shall be liable to such eviction without prejudice to any other action that may he taken against him under this Act.

Power to obtain information.

12. If the Collector has reason to believe that any person is in unauthorised occupation of any public premises, the Collector or any other officer authorised by him in this behalf may require such person or any person to furnish information relating to the names and other particulars of the person in occupation of the public premises and every person required shall be bound to furnish the information in his possession.

Liability of heirs and legal representatives.

13. (1) Where any person against whom any proceeding for the determination arrears of rent or for the assessment of damages is to be or has been taken dies before the proceeding is taken during the pendency thereof, legal proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.

(2) Any amount due to the State Government or the corporate authority from any person whether by way of arrears of rent or damages or costs shall after the death of the person, be payable by his heirs or legal representatives, but their liability shall be limited to the extent of the assets of the deceased in their hands.

Recovery of rent, etc. as arrears of land revenue or public demand.

14. If any person refuses or fails to pay the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government or the corporate authority under sub-section (5) of section 9 or any portion of such rent, damages or costs, within the time, if any, specified therefor in the order relating thereto, the Collector shall proceed to recover the aount due as arrears of land revenue or public demand.

Bar of Jurisdiction.

15. No Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of the rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government or the corporate authority under sub-section (5) of section 9 or any portion of such rent, damages or costs.

Protection of action taken in good faith.

16. No suit, prosecution or other legal proceeding shall lie against any person or authority for anything which is, in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder.

Owner to be a party.

17. (1) The owners of public premises shall be a party to every proceeding under the provision of this Act.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the owner shall have a right to produce evidence, and cross-examine witnesses and to prefer an appeal under section 9 against any order of the Collector made under the provisions of sections 5 and 6 of this Act.

Power to make rules.

18. (1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the form of any notice required or authorised to be given under this Act and the manner in which it may be served;
(b) the holding of enquiries under this Act;
(c) the procedure to be followed in taking possession of public premises;
(d) the manner in which damages or unauthorised occupation may be assessed and the principles which may be taken into account in assessing such damages;
(e) the manner in which appeals may be preferred and the procedure to be followed in appeals;
(f) any other matter which has to be or may be prescribed.

Repeal and Saving.

19. (1) The Sikkim Public Premises (Eviction of Unauthorised Occupants and Rent Recovery) Ordinance, 1980 (Ordinance No. 1 of 1980) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance (including any appointment made notice issued, order made, Notification published,officer duly authorised,assessment made, penalty or fine imposed, information obtained,cost awarded, proceeding taken)shall be deemed to have been done or taken under the corresponding provisions of this Act.

By Order of the Governor.

B. R. PRADHAN,

Secretary to the Government of Sikkim,
Law and Legislative Department,

F.No. 16 (74)/LL/79.

PRINTED AT THE SIKKIM GOVERNMENT PRESS